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August 31, 1993

AUG 31 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Rate Regulation,
MM Docket No. 92-266

Dear Mr. Caton:

Please find enclosed, on behalf of the National Association of Telecommunications Officers and Advisors, et al., an original and nine copies of the Further Comments of the National Association of Telecommunications Officers and Advisors, et. al., in the above-referenced proceeding.

Any questions regarding the submission should be referred to the undersigned.

Sincerely,

William E. Cook, Jr.
William E. Cook, Jr.

Enclosures

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AUG 31 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition)
Act of 1992)

Rate Regulation)

MM Docket No. 92-266

TO: The Commission

FURTHER COMMENTS REGARDING SMALL CABLE SYSTEMS
BY THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS, THE NATIONAL LEAGUE OF
CITIES, THE UNITED STATES CONFERENCE OF MAYORS,
AND THE NATIONAL ASSOCIATION OF COUNTIES

The National Association of Telecommunications
Officers and Advisors, the National League of Cities,
the United States Conference of Mayors, and the National
Association of Counties (collectively, the "Local
Governments") hereby submit these Further Comments in
the above-captioned proceeding.

INTRODUCTION

The Federal Communications Commission
("Commission") seeks further comments in this proceeding
on whether small cable systems owned by multiple system
operators ("MSOs") should be treated differently than
independently-owned small systems in terms of any

exceptions or modifications to the rate regulations the Commission might adopt for small systems. Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266 (released August 10, 1993).

Local Governments believe that the Commission should not create any small cable system exemption to its rate regulations for small systems affiliated with MSOs, given that such systems are financially and administratively able to comply with the Commission's rate regulations. Indeed, Local Governments believe that, while it may be appropriate to provide some procedural relief for small, truly independent cable systems, the Commission should not exempt any small system from its substantive rate regulations. Such an exemption would be inconsistent with Section 623's requirement that the Commission establish "reasonable" rates for all cable subscribers; the statute does not permit small system subscribers to receive less rate protection than subscribers to larger systems. Such a result would not only contravene the statute, but also basic fairness.

DISCUSSION

I. Small Cable Systems Affiliated with MSOs Do Not Qualify for Any Small System Exemptions

The Commission should ensure that only those cable systems that Congress intended to protect are granted a small system exemption. The purpose of Section 623(i), 47 U.S.C. § 543(i), is simplify, if possible, the rate regulatory procedures for small independently-owned cable systems serving 1,000 or fewer subscribers in order to reduce the burdens and compliance costs of rate regulation for such systems. In order to ensure that Section 623(i) protects only its intended beneficiaries, the Commission should apply any small system exemption it might adopt only to a cable system that may not have the resources or financial ability to comply with the Commission's procedural rate regulations.

A small cable system affiliated with an MSO clearly is not entitled to a small system exception. Such a small cable system has a variety of cost advantages over independently-owned small systems, such as, among other things, programming cost discounts and other "economy-of-scale" savings that MSOs can pass through to their systems. An MSO-affiliated system also has access to the corporate parent's financial and administrative resources. And, since the MSO's cable

systems serve numerous franchise areas, the MSO has a subscriber base that makes the MSO financially and administratively capable of complying fully with the Commission's rate regulations at each of its cable systems. Such benefits make it fair to require small systems affiliated with MSOs to comply fully with the Commission's rate regulations.

Local Governments do not believe that the Commission should adopt a "subscriber cap" that, with respect to small systems owned by MSOs, would limit any small system exemption to those systems that are controlled by an MSO having less than a certain number of subscribers in the aggregate. There is no rational basis for drawing such a "subscriber cap" limit. Moreover, the adoption of such a cap would result in inequities between MSO systems, which have the resources to comply with the Commission's regulations, and independently-owned systems. For instance, if the Commission adopted a "cap" of 25,000 subscribers, an MSO that served 20,000 subscribers would enjoy any small system exemption relief. Whereas, a cable system that served 1,500 subscribers would have to comply fully with the Commission's regulations -- despite the fact that it may have significantly less financial and administrative resources than the MSO. The Commission should not permit such inequities by adopting an artificial

subscriber cap. The only equitable solution is not to apply any small system exemption to MSO-owned cable systems.

II. Section 623 Requires that Small Cable Systems Comply With All Substantive Rate Regulations

Local Governments oppose the creation of any further small system exemptions to the Commission's rate regulations. The small system exemption contained at 47 C.F.R. § 76.934 already satisfies the requirement under Section 623(i) of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") that the Commission "design [rate] regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers." 47 U.S.C. § 543(i). Further exemptions may be in violation of the statutory requirement that the Commission ensure that all cable subscribers pay reasonable rates. See, e.g., 47 U.S.C. § 543(b) ("The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable"). Congress clearly did not intend for the Commission to treat small system subscribers as second class citizens by subjecting them to less rate protection than that afforded to subscribers to larger systems.

If the Commission determines that additional measures are necessary to reduce the administrative

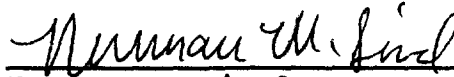
burdens on small systems of complying with the Commission's regulations, such measures should not be at the expense of the statutory command that the rates charged by such systems be "reasonable." Hence, small systems must not be exempted from compliance with the Commission's substantive rate requirements. Any further exemptions that the Commission might determine are required by Section 623(i) should be limited to reductions in paperwork requirements or other procedural or administrative requirements that the Commission may determine are unduly burdensome -- and only to the extent such reductions do not impact on the ability of the Commission and franchising authorities to regulate rates, and do not increase the regulatory burdens on franchising authorities regulating such cable systems.

CONCLUSION

For the foregoing reasons, the Commission should not apply any small system exemptions it might adopt to cable systems affiliated with MSOs. Moreover, the

Commission must not adopt any small system exemptions to its substantive rate requirements.

Respectfully submitted,

A handwritten signature in cursive script, reading "Norman M. Sinel", is written over a horizontal line.

Norman M. Sinel
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Dated: August 31, 1993